

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

TURNER HALSEY COMPANY, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0607

Decision No. CU

448

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by TURNER HALSEY COMPANY, INCORPORATED in the amount of \$44,771.54 based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in New York and that at all times between 1908 and presentation of this claim on December 22, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act. Claimant states that more than 99% of its stockholders are United States nationals.

The record contains invoices reflecting the sale to consignees in Cuba of goods as well as letters from collecting banks in Cuba indicating that these consignees had remitted payment in local currency and that the banks were awaiting a dollar reimbursement release from the Exchange Board of the Cuban Government as follows:

<u>Consignee</u>	<u>Amount Paid to Cuban Bank</u>	<u>Date Collection Acknowledged by Cuban Bank</u>
Aguste Hno y Cia	\$ 2,588.77	February 17, 1960
Cia Cubana de Encerados, S.A.	588.56	December 1, 1959
Distribuidora Ro Ri, S.A.	3,546.06	May 16, 1960
Isaac Curwitz	4,031.27	September 27, 1960 as to \$1,940.99 March 31, 1960 as to \$1,520.80 April 25, 1960 as to \$569.48
Jose A. Rodriquez	29,540.17	September 27, 1960
N. Smolansky	1,628.22	January 7, 1960
Tiondas Flogar	2,810.95	September 29, 1960

In all of the above cases, claimant states that it has not received the funds.

Additionally the record contains claimant's invoice of August 20, 1959, reflecting the sale to Dominguez y Cia of goods totalling \$31.97 as to which cost of shipping increased the total to \$37.54. Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred as follows:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 37.54
December 2, 1959	588.56
January 8, 1960	1,628.22
February 18, 1960	2,588.77
April 1, 1960	1,520.80
April 26, 1960	569.48
May 17, 1960	3,546.06
September 28, 1960	31,481.16
September 30, 1960	2,810.95

The day after payment was due as to the \$37.54 amount and the day after the collections were acknowledged by the Cuban Banks as to the remainder amounts.

The Commission has decided that in the certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that TURNER HALSEY COMPANY, INCORPORATED suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Four Thousand Seven Hundred Seventy-One Dollars Fifty-Four Cents (\$44,771.54) with interest thereon at 6% per annum from the respective date of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 25 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims, Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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